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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,966	04/14/2000	Randolph Michael Forlenza	AUS000072US1	9041

7590 03/23/2004  
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P.O. Box 969  
Austin, TX 78767-0969

EXAMINER

PHAM, HUNG Q

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/549,966

Applicant(s)

FORLENZA ET AL.

Examiner

HUNG Q PHAM

Art Unit

2172

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 February 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 6, 7, 13, 14, 20 and 21.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 14.
10. ☐ Other: \_\_\_\_\_

  
ALFORD KINDRED  
PRIMARY EXAMINER

After the 11/18/2003 Final Rejection, a Request For Reconsideration was filed on 12/30/2003, which was replied by an Advisory Action on 01/08/2004. In response to this Advisory, a Declaration Under 37 C.F.R. § 1.131, an Information Disclosure Statement, and another Request For Reconsideration were filed on 02/02/2004, and because the Declaration was defected (no signature), an Advisory was issued on 02/18/2004 based on this deficiency. A new Declaration Under 37 C.F.R. § 1.131, Notice of Appeal, and Response Letter were filed on 02/13/2004, 02/18/2004 and 02/25/2004, respectively.

The Request For Reconsideration on 02/02/2004 was considered, especially the argument on page 2 and the first three lines of page 3. However, the rejection of claims 6-7, 13-14 and 20-21 is still maintained as set forth in the 11/18/2003 Final Rejection and 01/08/2004 Advisory Action.

There was no consideration was made on the Declaration Under 37 C.F.R. § 1.131, and the Information Disclosure Statement because:

*affidavits or declarations under 37 CFR 1.1.1 must be timely presented in order to be admitted. Affidavits and declarations submitted under 37 CFR 1.131 and other evidence traversing rejections are considered timely if submitted: after final rejection and submitted (1) with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection (MPEP 715.09).*

*An information disclosure statement shall be considered by the Office if filed before the mailing date of any of a final action under § 1.113 (MPEP 609, 37 CFR 1.97 (c)).*

Therefore, the argument on page 3, line 4-page 6, which based on the Declaration and IDS, will not be considered.